



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Astor V. Bolden

File: B-257038

Date: April 26, 1994

John E. Menechino, Jr., Esq., Smith, Currie & Hancock, for the protester.

Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Behn Miller, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bidder sought to act as its own surety, agency properly rejected bid as nonresponsive.

DECISION

Astor V. Bolden protests the rejection of his bid as nonresponsive under invitation for bids (IFB) No. F31610-94-B0009, issued by the Department of the Air Force to repair the sanitary sewers for family housing facilities located at Johnson Air Force Base, North Carolina. Bolden contends that the Air Force improperly rejected his bid as nonresponsive.

We dismiss the protest.

The IFB was issued on February 16, 1994, and provided that contract award would be made to the lowest-priced, responsive, responsible bidder. As part of their bids, bidders were required to complete and submit the solicitation's Standard Form (SF) 24 bid bond in the amount of 20 percent of the total bid price. On the bid bond form, Astor Bolden indicated that he would be acting as an individual surety and pledged a piece of real estate as security for the bond amount; Bolden also submitted the accompanying bid in the name of "Astor V. Bolden," and indicated that he was bidding as an individual, as opposed to a corporate entity.

At the March 21 bid opening, Bolden was the lowest-priced bidder. However, after reviewing Bolden's bid documents, the contracting officer determined that Bolden's submitted bid bond was unacceptable since Bolden was acting as his own

surety. Consequently, on April 4, the contracting officer rejected Bolden's bid as nonresponsive.

On April 14, after receiving the contracting officer's notification that the bid had been rejected, Bolden filed this protest with our Office.


Bid bonds are a form of bid guarantee designed to protect the government's interest in the event of a bidder's default; that is, if a bidder fails to honor its bid in any respect, the bid bond secures a surety's liability for all reprourement costs. See N.G. Simonowich, 70 Comp. Gen. 28 (1990), 90-2 CPD ¶ 298. As such, a required bid bond is a material condition of an IFB with which there must be compliance at the time of bid opening; when a bidder submits a defective bid bond, the bid itself is rendered defective and must be rejected as nonresponsive. Vista Contracting, Inc., B-255267, Jan. 7, 1994, 94-1 CPD ¶ 61. The determinative question as to the acceptability of a bid bond is whether the bid documents establish that the bond is enforceable against the surety should the bidder fail to meet its obligations. See A.W. and Assocs., Inc., 69 Comp. Gen. 737 (1990), 90-2 CPD ¶ 254; Vista Contracting, Inc., supra. In this case, we conclude that Bolden's bid bond is unacceptable.

Suretyship is a tripartite relationship created by agreement between the party insured (the government), the principal obligor (the bidder) and the surety or guarantor (a third party). See Federal Acquisition Regulation § 28.001. Consequently, a surety must be a distinct entity from the bid bond principal, as the surety undertakes to pay the debt or to perform an act for which the principal has bound himself, should the principal default. See F&F Pizano--Recon., 64 Comp. Gen. 805 (1985), 85-2 CPD ¶ 234. Thus, a bidder cannot act as its own surety; otherwise, the fundamental purpose of the bid bond--to protect the government's interest in the event of the prime contractor's default--is frustrated. Id.; Appropriate Technology, Ltd., 68 Comp. Gen. 192 (1989), 89-1 CPD ¶ 60.

Here, the record unequivocally shows that Mr. Bolden has identified himself in the bid documents as both the individual bidder for this contract as well as the

individual surety; under these circumstances, the bid bond is deficient and mandates rejection of the underlying bid as nonresponsive.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel